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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/673,636

09/29/2003

Gary Vacon

160-007

1124

34845 7590 02/23/2007  
McGUINNESS & MANARAS LLP  
125 NAGOG PARK  
ACTON, MA 01720

EXAMINER
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NGUYEN, KHAI MINH

ART UNIT	PAPER NUMBER
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2617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/673,636

Applicant(s)

VACON ET AL.

Examiner

Khai M. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2, 7, 9, 14, 16 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 9 and 16 is/are allowed.
- 6) ☒ Claim(s) 7, 14 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**DETAILED ACTION**

1. In view of the Appeal Brief filed on 11/14/2006, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Joseph Feild

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaszewski et al. (U.S.Pat-5933420) in view of Sayers et al. (U.S.Pat-6729929).

Regarding claim 7, Jaszewski teaches an access point operable to provide wireless network access to client devices coupled to a wireless network (fig.1-4, access point 1-4, abstract), the access point comprising:

a controller capable of automatically choosing one of a plurality of radio frequencies on which to operate (fig.2-4, col.9, line 60 to col.10, line 44), said controller choosing said frequency after evaluating frequencies on which other access points operate (fig.2-4, col.9, line 60 to col.10, line 63), said controller comprising:

Jaszewski fails to specifically disclose a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power. However, Halasz teaches a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic

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for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power (fig.22, abstract, col.7, line 12 to col.8, line 41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply to the teaching of Jaszewski to Sayers to provide a method for scanning the other cell signals from other cells in the cellular region and the particular cell signal does not interfere with the other cell signals in the cellular region.

Regarding claim 14, Jaszewski teaches a method comprising the steps of:

providing an access point operable to provide wireless network access to client devices coupled to a wireless network (fig.1-4, access point 1-4, abstract);

automatically choosing by the access point one of a plurality of radio frequencies on which to operate (fig.2-4, col.9, line 60 to col.10, line 63), after evaluating frequencies on which other access points operate (fig.2-4, col.9, line 60 to col.10, line 63), wherein the step of automatically choosing comprises the steps of:

Jaszewski fails to specifically disclose a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency

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and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power. However, Halasz teaches a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power (fig.22, abstract, col.7, line 12 to col.8, line 41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply to the teaching of Jaszewski to Sayers to provide a method for scanning the other cell signals from other cells in the cellular region and the particular cell signal does not interfere with the other cell signals in the cellular region.

Regarding claim 21, Jaszewski teaches a program product comprising a computer readable medium having embodied therein a computer program for storing data (fig.1-4, abstract, col.3, lines 27-32), the computer program comprising:

logic for operation in an access point (fig.1-2, col.3, line 59 to col.4, line 25), the access point operable to provide wireless network access to client devices coupled to a wireless network (fig.1-2, col.3, line 59 to col.4, line 25), the logic for automatically

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choosing one of a plurality of radio frequencies on which to operate (fig.2-4, col.9, line 60 to col.10, line 63), the logic choosing said frequency after evaluating frequencies on which other access points operate (fig.2-4, col.9, line 60 to col.10, line 63), the logic comprising:

Jaszewski fails to specifically disclose a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power. However, Halasz teaches a. logic for picking a frequency; b. logic for transmitting on said frequency; c. logic for receiving on said frequency; d. logic for evaluating whether other access points are heard on said frequency; e. logic for reducing transmission power; f. logic for evaluating whether said other access points are still heard on said frequency; g. logic for storing the transmission power at which no other access points are heard; h. logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i. logic for comparing said stored transmission powers; j. logic for choosing for operation the frequency associated with the highest stored transmission power (fig.22, abstract, col.7, line 12 to col.8, line 41). Therefore, it

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would have been obvious to one of ordinary skill in the art at the time the invention was made to apply to the teaching of Jaszewski to Sayers to provide a method for scanning the other cell signals from other cells in the cellular region and the particular cell signal does not interfere with the other cell signals in the cellular region.

***Allowable Subject Matter***

3. Claims 2, 9 and 16 are allowed.

The following is a statement of reason for the indication of allowance: As the applicant stated in the remarks of the amendment filed on 11/14/2006.

Applicant's independent claims 2, 9 and 16: The present invention is directed to a first access point operable to provide wireless network access to client devices couple to a wireless network, the independent claim identifies the patentably distinct feature "an indicator operable to provide an external indication of the signal strength directly from the first access point to a human being, the indication being perceivable by the human being and also being indicative of the signal strength of the second access point, whereby proximity of the second access point relative to the first access point can be estimated by the human being directly from reference to the first access point without knowing the precise geographic location of the second access point".

Applicant's independent claims 2, 9 and 16 comprise a particular combination of elements, which is neither taught nor-suggested by prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably



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accompany the issue fee. Such submission should be clearly labeled "Comments on Statement of Reasons for Allowance."

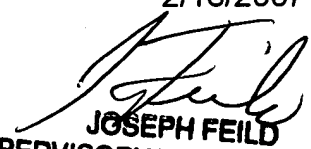
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khai M. Nguyen whose telephone number is 571.272.7923. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on 571.272.4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Khai Nguyen  
Au: 2617

2/18/2007  
  
JOSEPH FEILD  
SUPERVISORY PATENT EXAMINER